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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 26 1998

Federal Communications Commission
Office of Secretary

In the Matter of	CCB/CPD, No. 98-34, DA 98-845
	CC Docket Nos. 96-262, 94-1, 91-213, 95-72
Access Charge Reform	

COMMENTS OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL

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TABLE OF CONTENTS

TABLE OF CONTENTS

Page

SUMMARY

As the letters to the Common Carrier Bureau make clear, the Commission needs to clarify the application of the PICC to payphones. APCC understands that there is a good deal of unhappiness from many consumers about the imposition of the PICC as well as other new charges on end-user telephone bills. APCC does not argue here that these charges are necessarily unwarranted, or that independent PSPs should not pay a PICC like other end users. Independent PSPs should not be required, however, to pay more than their fair share of these charges. To do so would be patently unfair. Yet, the LECs and the IXCs are imposing just such a requirement by overcharging independent PSPs on the PICC in a way that was never intended by the Commission when it adopted the PICC rules.

For example, the current practice of the LECs is to charge the multiline business PICC to those IXCs presubscribed to payphones. The IXCs, in turn, pass these charges on to the end user PSPs. Yet, it is a matter of common sense that payphones are not multiline businesses. Each payphone has a separate line number. Each payphone is a stand-alone facility with separate physical plant and dedicated line. Each payphone is billed as a separate unit by the LEC and generally has a billing cycle different from that for other payphones maintained by the same PSP. In many cases, the payphone is the *only telephone* line at a given location. Yet the LECs and IXCs nevertheless apply the multiline business rate to those payphones.

Accordingly, the Commission should end the imposition of the multiline PICC on payphones by clarifying that all payphones are to be treated as single-line businesses

rather than as multiline businesses for purposes of imposing the PICC. Such a clarification would be consistent with the purpose of Section 276 and the Commission's rules "to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public[.]"

As a separate matter, the FCC must either put an end to the LECs' discriminatory practice of imposing "no-PIC" fees on independent payphones that do *not* presubscribe to an IXC or require LECs to charge their own payphone operations *not* the presubscribed 0+ carrier, a "no-PIC" charge for each LEC payphone. The Commission has permitted LECs to impose the no-PIC charge on end users generally, largely as a means of curbing an end user's incentive to rely on dial-up access instead of presubscribing their residential or business telephones to avoid the PICC. This concern does not appear to have anything to do with payphones, nor does the Commission appear to have considered that its past rulings, and those of some of the state commissions, have encouraged independent PSPs to avoid presubscribing their payphones to prevent fraud on the communications network.

Because of the manner in which LEC payphone calls are routed to the presubscribed 1+ carrier, LEC payphones do not have the same exposure to potential fraud as their independently-owned counterparts. Many independent PSPs today do not presubscribe their payphones to IXCs. Without a presubscribed carrier, an independent PSP can help reduce the possibility of being held liable for fraudulent charges that would be billed to the PSP. An independent PSP achieves this without any burden on the calling public. From the caller's point of view, nothing has changed. Callers can still place 1+ long distance coin calls on a "no-PIC" payphone without any additional effort; the call is simply routed to the carrier through the "smart" payphone's use of an access code within the phone. Callers can also continue make 0+ calls with the use of a calling card or billing the call collect.

By assessing a "no-PIC" charge on independent PSPs, while not applying such a charge to LEC PSPs, the LECs are perpetuating residual discrimination between LEC-owned and independently-owned payphones. Section 276 of the Act abrogated all distinctions between the two classes of providers and mandated that LEC PSPs and independent PSPs be treated the same under the Commission's rules and state regulations. Moreover, LECs are not permitted to discriminate against independent PSPs in favor of the LECs' payphone operations. To the extent that the differences in treatment from technical details still exist, the differences must be adjusted to the greatest extent possible. For this reason, it is in the public interest and consistent with the Commission's post-1996 Act policy on payphones to require that LECs *not* impose any "no-PIC" charge on any payphone that is not presubscribed to an IXC.

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COMMENTS OF AMERICAN PUBLIC COMMUNICATIONS COUNCIL

Pursuant to the Commission's Public Notice, DA 98-845, released May 4, 1998, the American Public Communications Council ("APCC"), hereby comments on the imposition of the presubscribed interexchange carrier charge ("PICC") on payphone service providers ("PSPs").[1] Since these charges and others resulting from the Telecommunications Act of 1996 were first imposed at the beginning of this year, telecommunications providers have raised a number of questions about how these charges are to be applied.

In particular, PSPs have noted the inconsistent and confusing manner in which the Commission's PICC rules have been imposed on independent payphone service providers ("PSPs") and local exchange carrier ("LEC")-owned payphones. Four letters to the

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[1] Commission Seeks Comment on Specific Questions Related to Assessment of Presubscribed Interexchange Carrier Charges on Public Payphone Lines, CCB/CPD No. 98-34, DA 98-845, released May 4, 1998.

Common Carrier Bureau requesting clarification of the Commission's PICC rules from firms that either provide or market operator services from payphones prompted this proceeding (collectively "the letter requests"). The letter requests indicate that the LECs are applying the PICC in a manner that discriminates in favor of LEC payphone affiliates and maximizes revenue for the LEC generally.

APCC contends that there are two PICC issues of particular importance to independent PSPs that the Commission should address: (1) whether payphones should be charged the multiline business PICC or the single-line business PICC; and (2) whether payphones that are not presubscribed to any interexchange carrier ("IXC"), usually as a means of reducing the legal exposure to fraud and reducing the likelihood that fraudulent calls can be made, should be required to pay a "no-PIC charge." The "no-PIC" charge directly implicates the manner in which the BOCs have discriminatorily applied the PICC to favor their payphone operations as described in the letter requests, and is thus thoroughly intertwined with the issues that are the subject of the Commission's notice.

APCC is a national trade association comprised of almost 2,000 manufacturers and providers of independent public payphones. APCC's purpose is to promote fair competition and high standards of service in the payphone and public communications markets. APCC has actively participated in every major FCC proceeding affecting payphones.

I. Overview of the PICC as Applied to Payphones

Since the Telecommunications Act of 1996 was enacted, the Federal Communications Commission ("the Commission" or "FCC") has adopted rules in a number of proceedings that have largely transformed the regulatory landscape for both payphones and PSPs. Today, largely through the FCC rules implementing Section 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act"), the local coin rate at each payphone is market-based. In addition, PSPs are finally entitled to per-call compensation for "each and every intrastate and interstate call originated by their payphones[,]" most notably calls to 800-number subscribers, although the payment of the per-call compensation has lagged pending Commission action on some issues remanded by the reviewing court.[2] In addition, with Section 276's mandate that discrimination in favor of LEC payphone operations be terminated,[3] LEC-owned payphones and independently-owned payphones are to be treated the same way by the Commission, i.e., there are to be no regulatory distinctions between LEC PSPs and independent PSPs, nor between their respective payphones.[4] Further, the statute prohibits

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2 Illinois Public Telecommunications v. FCC, 177 F.3d 555 (D.C. Cir.). In that July 1, 1997 opinion, the Court upheld both federal jurisdiction over local coin calls and a "carrier pays" compensation system. The Court remanded issues related to compensation for coinless calls. On May 15, 1998, after an additional Order by the FCC addressing the Court's concerns, the Court again remanded issues related to compensation for coinless calls. MCI v. FCC, Case No. 97-1675, decided May 15, 1998 (D.C. Cir.).

3 47 U.S.C. § 276(a).

4 Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd. 20541 (1996) at ¶¶ 9-10 ("Payphone Order").

LECs from discriminating against independent PSPs in favor of the LECs' own payphone operations.[5]

Like most other providers of telecommunications services, PSPs have had to adjust to the sweeping overhaul of telecommunications regulation in which the Commission and the states have engaged during the past two years. In most of these proceedings, the focus of the Commission or the states has often been on the larger players, primarily the IXCs and LECs. In addition, the nature of a PSP's business causes the PSP to wear different, often incompatible hats, such as an "end user" and "service provider." These factors have sometimes led to PSPs being overlooked in the regulatory balancing by the Commission and, thus, hit harder by the new regulatory charges than the Commission would have intended, if there had been an opportunity to examine the situation in greater depth. The imposition of the PICC on payphones is a prime example of this unfortunate trend of making PSPs pay more than their fair share.

As a part of the Commission's overhaul of the access charge system, under which IXCs pay LECs for the ability to connect to the LEC for the purpose of originating and terminating toll calls, the Commission authorized LECs to charge IXCs the PICC.[6] This approach continues a trend of requiring LECs to recover their non-traffic-sensitive

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5 47 U.S.C. § 276(a).

6 In Re Access Charge Reform, CC Docket Nos. 96-262, 94-1, 91-213 & 95-72, First Report and Order, FCC 97-158 (released May 16, 1997) ("Access Charge Reform Order").

("NTS") costs through flat-rate charges that more accurately capture those costs as they are incurred, rather than through the traditional usage-based charges. The concept of moving towards NTS cost recovery is that these NTS costs per user (primarily the "loop" costs and certain central office switch costs) are recovered directly from the cost causer, rather than built into the per minute access rate paid by IXCs.

Pursuant to the Commission's new rules, the PICC is assessed by LECs on IXCs on a flat-rated, per-line basis. The maximum PICC charged to the IXC by the LEC depends on the category into which the IXC subscriber falls. The Commission created the following categories of subscribers and maximum charges for the LECs to charge IXCs:

Category	1998	Authorized Annual Increase
Primary Residential	0.53	0.50
Non-Primary Residential	1.50	1.00
Single Line Business	0.53	0.50
Multi-Line Business	2.75	1.50

Although the Commission did *not* require the IXCs to pass these costs onto end users, most IXCs appear to be doing not only that, but passing on the ***highest possible*** PICC. As the letter requests to the Common Carrier Bureau point out, independent PSPs are currently being charged by IXCs (and LECs as well when the "no-PIC" PICC is imposed) the multiline business PICC of $2.75 per payphone per month (as opposed to $0.53 for a single line) when the independent PSPs has more than one phone within the LEC's territory. This is an incorrect interpretation of the Commission's rules by the LECs. The Commission should clarify for both LECs and IXCs that the single-line business PICC applies to independently-owned payphones. As discussed below, this rate best reflects the nature of an independent PSP's business as well as the LECs' treatment of individual payphones, which, for example, all have separate line numbers, separate monthly bills, and separate billing cycles. Moreover, a single line rate is most consistent with the objective of Section 276 to encourage the widespread deployment of payphones to the benefit of the general public.[7]

For independent PSPs that have not selected a primary IXC, which is a frequent practice for preventing toll fraud from payphones,[8] the LEC does not have the option of recovering a PICC from an IXC. As a result, however, many LECs are unfairly imposing a "no-PIC" of $2.75 per payphone per month fee directly on the end user in the absence of a presubscribed IXC. Forcing independent PSPs to pay a *de facto* PICC through the "no-PIC" charge penalizes independent PSPs that are taking action to curb fraud.[9] In addition, as discussed in the succeeding section, LECs are perpetuating residual discrimination by assessing both the PICC and the "no-PIC" charge differently on independently-owned PSPs than on the LECs' own payphones.

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7 47 U.S.C. § 276(b)(1).

8 See United Artists v. New York Telephone Company and AT&T, 8 FCC Rcd 5563 (1993) as discussed in Section II.B., below.

9 To compound the financial burden being imposed on independent PSPs, the monthly "no-PIC" charge is also being assessed at the $2.75 multiline business rate for the PICC, instead of the $0.53 single-line business rate.

II. Background on Payphone Presubscribed Carriers

A. BOC and LEC Payphones

Before divestiture, AT&T carried all long-distance calls (both 1+ and 0+) from all payphones. After divestiture, the Bell System payphones were assigned to the newly-formed Bell Operating Companies ("BOCs") but retained their presubscription to AT&T. When the consent decree became effective in 1984, only AT&T of all the IXCs had the ability to perform all of the functions required for the use of payphones. Therefore, all long distance calls from payphones were routed to AT&T immediately following divestiture. On February 6, 1984, the United States District Court for the District of Columbia (Judge Harold Greene) granted a waiver allowing the BOCs to continue to route all interLATA traffic from payphones to AT&T. United States v. Western Electric Co., slip op. February 6, 1984. This waiver was to last until the BOCs could overcome the technical obstacles to equal access from these telephones.[10]

On October 14, 1988, the Court ordered the BOCs to begin equal access presubscription of payphones to allow the IXCs to compete for the business from BOC payphones. Under the Court's directions, premises owners were allowed to choose presubscribed 0+ carriers for the payphones on their premises. United States v. Western Electric Co., 698 F. Supp. 348, 368-369 (D.D.C. 1988). The BOCs were barred entirely from participation in this process.

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[10] This discussion in Section II.A. concerning the BOCs is also generally applicable to GTE.

Although Judge Greene's directive allowed competing IXCs to be presubscribed as the 0+ carrier for BOC-owned payphones, it did not resolve the issue of 1+ presubscription, as the Court recognized. Most of the BOC-owned payphones today, as before, are "dumb" payphones that need supervision or "intelligence" from the LEC central office to function. Because the payphones are "dumb," all 1+ calls that are paid for by coin deposits are by necessity automatically routed to an operator platform for calculation of the charges on the 1+ call and for counting and supervision of the coin deposits. The Court concluded that 1 + sent-paid long distance traffic could continue to be presubscribed to AT&T until other carrier choices became available, because only AT&T possessed the necessary coin counting and supervision capabilities. Id., 359-60, 367-69. Subsequent orders by the Court have allowed LEC-owned payphones to presubscribe to carriers other than AT&T for 1+ presubscription. United States v. Western Electric Co., 739 F. Supp. 1 (1990). Because of the costs and technical difficulties involved, only one company of which APCC is aware (AMNEX) has developed the ability to handle 1+ traffic from LEC payphones.

Thus, BOC-owned payphones are by necessity still presubscribed to one of two IXCs for their 1+ traffic, with the overwhelming number of them apparently still presubscribed to AT&T. By contrast, these payphones may be presubscribed to any 0+ carrier, as chosen by the premises owner. Today, the 0+ interLATA traffic from BOC-owned payphones is often presubscribed to a carrier other than AT&T. As a result, BOC-owned payphones often have a separate 1 + and 0 + presubscribed carriers.

As explained above, under the various divestiture court rulings, prior to the 1996 Act, the premises owner for a BOC-owned payphone had the ability to choose the 0+ presubscribed carrier, and the 0+ presubscribed carrier had no contractual privity with the BOC.[11] Section 276(b)(1)(D) of the 1996 Act allows BOCs to participate with the premises owner in the selection of a 0+ carrier but contracts existing at the time of the Act's enactment are grandfathered, and these contracts still govern the majority of BOC payphones.

The payphones of the independent LECs, i.e., those LECs other than the BOCs, are also "dumb" payphones with the intelligence at the LEC central office. Unlike the BOCs, however, the independent LECs have always been permitted to participate in the selection of the 0+ carrier presubscribed to LEC payphones, and have thus made the choices that best serve each independent LEC's economic interest. For the 1+ carrier, the independent LECs have the same technical constraints as the BOCs and have, therefore, tended to keep their payphones presubscribed AT&T for 1+ calls.

B. Independent PSPs

When independent PSPs entered the market after divestiture, LECs denied them use of coin lines with central office support for payphone functionality. For the most part, LECs made available only "conventional POTS" lines, which were presubscribed like any

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[11] Although, the premises owner acquired the theoretical right also to choose the 1+ carrier in 1990, as discussed in the text, as a practical matter, there was until very recently no choice at all.

other business or residential line. Independent PSPs deployed "smart" payphones with the intelligence in the set, a pattern which persists today. "Smart" payphones are able to handle a variety of billing and coin functions within the payphone. Indeed, the technological differences between LEC "dumb" payphones and independent PSPs' "smart" phones are particularly distinct with respect to the coin functions.

For a "dumb" payphone typically deployed by LECs,[12] there is no capability inside the payphone itself to either produce a rate quote or to count and process the coins. All of this activity occurs at an outside operator platform – automated or live – that is able to receive and transmit the necessary signals to count and process the coins. Because the coin counting and supervision occur at the operator platform, the central office is programmed to route the call on operator trunks to ensure that callers pay for the calls. This technical configuration has provided LEC-owned "dumb" payphones with fraud screening devices, which obviates the "dumb" payphone's need for additional fraud protection measures, such as most blocking services.

For the "smart" payphones deployed by independent PSPs, the capability to rate the call, process the coins, and route the call is within the payphone set, completely independent of the LEC central office. In the middle and late 1980s, when the independent payphone industry was still in its infancy, fraudulent callers were sometimes able to bypass the rating and coin-counting intelligence in the payphone and make illegal

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[12] Some LECs have begun to deploy "smart" payphones in recent years, but "smart" payphones remain a small minority of LEC-owned payphones.

long distance calls on the presubscribed 1+ carrier. Eventually, the LECs were required by the Commission to offer blocking and screening services to prevent fraudulent calls on the presubscribed 1+ carrier if the "smart" payphone's intelligence was bypassed. Unfortunately, the early LEC blocking and screening services failed more often than was acceptable, so independent PSPs began to look for ways to avoid liability for fraudulent calls. The independent PSPs began to "no-PIC" their payphones, which simply meant that the payphone has *no* presubscribed 1+ carrier. Instead, the 1+ carrier is accessed by the "smart" payphone through the dialing of an access code within the payphone set. This difference in accessing the 1+ carrier is transparent to the caller; he or she can still make a 1+ long distance coin call as before.

The Commission reviewed the independent PSPs' rationale for selecting "no-PIC" in United Artists Payphone Corporation v. NYT and AT&T, 8 FCC Rcd. 5563 (1993) ("United Artists"). In that complaint proceeding, AT&T attempted to collect fraudulent toll charges from an independent PSP even after the PSP had chosen to "no-PIC" its payphones as a method of fraud protection. In addition to not presubscribing its payphone to an IXC, the PSP in United Artists had ordered blocking and screening services from the LEC to prevent interLATA calling. The Commission found that the PSP was not liable for calls made from its payphones. A critical factor in the Commission's decision was the PSP's decision to "no-PIC" its payphones. The Commission found that the PSP had not "ordered" the interexchange service through which the fraud had occurred. United Artists at 5566. This holding has encouraged many independent PSPs to "no-PIC" their payphones as a way of simultaneously curbing toll fraud and ensuring that the PSP did not incur fraudulent charges. As a result, many independently-owned payphones today are not presubscribed to a 1+ carrier.

For 0+ calls, as opposed to 1+ calls, there is also a fundamental difference in how the traffic is routed. The typical independent "smart" payphone (with intelligence in the set) routes to a 0+ carrier through processes internal to the phone; versus a LEC "dumb" (with intelligence at the central office switch) payphone which is "presubscribed" to send the traffic to particular carrier.

On a "smart" payphone, after the caller dials 0+ the phone number, the "smart" phone software actually dials the access code for the 0+ carrier and connects the call. The dialed access code is transparent to the caller and to the LEC providing the payphone line to the independent PSP. LECs have no way of knowing what 0+ carrier the independent PSP has chosen since the routing to an IXC is an internal function of the payphone.

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To sum up, as discussed above, a dumb payphone, primarily LEC-owned payphones, generally has *two* "presubscribed" carriers, one for 0+ traffic and one for 1+ traffic. They are presubscribed in the true sense; the routing for these calls is controlled entirely in the LEC switch. Hence, the LEC will know both the presubscribed carriers. Further, because of the need for operator coin counting and coin supervision, there is always a 1+ PIC (generally AT&T but in some cases AMNEX). This 1+ PIC is a means of avoiding fraud (because 1+ calls are routed over both operator trunks) and ensuring payment.

By contrast, independent payphones may have no PIC at all in order to avoid liability for fraud, and must separately provide for fraud protection. Where there is a PIC, it will be a 1+ PIC only. When an independent PSP "no-PICs" its payphones, it will generally program its "smart" payphone to route long-distance coin traffic to a 1+ carrier in the same manner that the payphone routes traffic to a 0+ carrier – through the dialing of an access code internally within the hardware of the payphone. But neither the arrangement for accessing an IXC to complete a 1+ call nor the arrangement for accessing an IXC to complete a 0+ call – dialing an IXC access code internal to the payphone – is a "presubscription;" it is rather a means of routing the call that is transparent to both the caller and the LEC.

III. Specific Questions on Which the Common Carrier Bureau Seeks Comment

1. Issues Raised In The Following Letters To Common Carrier Bureau Representatives: Letter From John H. Goida, Letter From Larry Kay, Letter From Stephen H. Loberbaum, Letter From William M. Waldron

As the letters to the Common Carrier Bureau make clear, the Commission needs to clarify the application of the PICC to payphones. APCC understands that there is a good deal of unhappiness from many consumers about the imposition of the PICC as well as other new charges on end-user telephone bills. APCC does not argue here that these charges are necessarily unwarranted, or that independent PSPs should not pay a PICC like other end users. Independent PSPs should not be required, however, to pay more than their fair share of these charges. To do so would be patently unfair. Yet, the LECs and the

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IXCs are imposing just such a requirement by overcharging independent PSPs on the PICC in a way that was never intended by the Commission when it adopted the PICC rules.

For example, the current practice of the LECs is to charge the multiline business PICC to those IXCs presubscribed to payphones. The IXCs, in turn, pass these charges on to the end user PSPs. Yet, it is a matter of common sense that payphones are not multiline businesses. Each payphone has a separate line number, which transmits an individual automatic number identification ("ANI"). Unlike the typical multiline situation, payphones are not concentrated, have no direct inward dialing ("DID"), and have no shared use. Each payphone is a stand-alone facility with separate physical plant and dedicated line. Each payphone is billed as a separate unit by the LEC and generally has a billing cycle different from that for other payphones maintained by the same PSP. Each payphone is maintained as a single-line facility, even when the ownership is the same. Whether payphones are placed in groups or alone, each individual payphone unit must be economically viable, or it will be removed by the PSP.[13] In many cases, the payphone is the *only telephone* line at a given location. Many payphone locations are in small businesses, service stations, restaurants or other businesses with few or no other telecommunications facilities. Yet the LECs and IXCs nevertheless apply the multiline business rate to those payphones.

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13 Indeed, the Commission has recognized the need to provide "public interest payphones" in locations where a payphone would not be economically viable on its own. Payphone Order, ¶ 264.

Accordingly, the Commission should end the imposition of the multiline PICC on payphones by clarifying that all payphones are to be treated as single-line businesses rather than as multiline businesses for purposes of imposing the PICC. Such a clarification would be consistent with the purpose of Section 276 and the Commission's rules "to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public[.]"[14]

As a separate matter, the FCC must do one of two things. The FCC can either put an end to the LECs' discriminatory practice of imposing "no-PIC" fees on independent payphones that do *not* presubscribe to an IXC or the FCC can require LECs to charge their own payphone operations (not the presubscribed 0+ carrier) a "no-PIC" charge for each LEC payphone. The Commission has permitted LECs to impose the no-PIC charge on end users generally, largely as a means of curbing an end user's incentive to rely on dial-up access instead of presubscribing their residential or business telephones to avoid the PICC. This concern does not appear to have anything to do with payphones, nor does the Commission appear to have considered that its past rulings, and those of some of the state commissions, have encouraged independent PSPs to avoid presubscribing their payphones to prevent fraud on the communications network.

As established in the preceding section, because of the manner in which LEC payphone calls are routed to the presubscribed 1+ carrier, LEC payphones do not have the

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14 47 U.S.C. § 276(b)(1).

same exposure to potential fraud as their independently-owned counterparts. In United Artists, the Commission considered whether a PSP was liable for toll charges that were fraudulently incurred and concluded that the PSP was not liable because it had declined to presubscribe its payphone to an IXC that would carry the toll calls at issue. As a result of this ruling, many independent PSPs today do not presubscribe their payphones to IXCs. Without a presubscribed carrier, an independent PSP can help reduce the possibility of being held liable for fraudulent charges that would be billed to the PSP. An independent PSP achieves this without any burden on the calling public. From the caller's point of view, nothing has changed. As discussed above, callers can still place 1+ long distance coin calls on a "no-PIC" payphone without any additional effort; the call is simply routed to the carrier through the "smart" payphone's use of an access code within the phone. Callers can also continue make 0+ calls with the use of a calling card or billing the call collect.

By assessing a "no-PIC" charge on independent PSPs, while not applying such a charge to LEC PSPs, the LECs are perpetuating residual discrimination between LEC-owned and independently-owned payphones. As discussed above, Section 276 of the Act abrogated all distinctions between the two classes of providers and mandated that LEC PSPs and independent PSPs be treated the same under the Commission's rules and state regulations. Differences in the presubscription process for LEC "dumb" phones, which are generally central-office controlled, and independent "smart" payphones, with the intelligence in the set, are not to be carried forward under the Commission's post-1996 Act deregulatory framework for payphones. Moreover, LECs are not permitted to discriminate against independent PSPs in favor of the LECs' payphone operations. To the extent that the differences in treatment from technical details still exist, the differences must be adjusted to the greatest extent possible. For this reason, it is in the public interest and consistent with the Commission's post-1996 Act policy on payphones to require that LECs *not* impose any "no-PIC" charge on any payphone that is not presubscribed to an IXC.

In the alternative, should the Commission find that a "no-PIC" charge is permissible for policy reasons that are specific to its access charge reform proceeding, the Commission must ensure that such a charge does not have a discriminatory impact vis-à-vis its payphone rules. To prevent a discriminatory impact on independent PSPs, a LEC should be required to impose a "no-PIC" charge on all of its payphones if the LEC chooses to impose the charge on any independent payphone.[15] Such equal treatment would ensure that the disparate regulatory treatment of the past does not become residual discrimination in the present, contrary to the command of Section 276.

2. Does The Commission's Existing Rule Governing Collection Of The PICC, 47 C.F.R. § 69.153, Permit Price Cap LECs To Impose PICC Charges For LEC Public Payphone Lines And, If Not, Whether The Rule Should Be Amended To Provide Explicitly For Assessment Of PICCs On Public Payphone Lines?

Section 69.153 of the Commission's rules does not address the imposition of the PICC on payphone lines. In any event, if the PICC is to be imposed, Section 276 of the

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[15] This assumes that the LEC would continue to impose the PICC on 0+ carrier of LEC-owned payphones. As discussed in response to Question 3, below, if the LEC instead imposes the PICC on the 1+ carrier, then there would be no need to impute the "no-PICC" charge to the LECs' payphone operations.

Telecommunications Act of 1996 terminated the regulatory distinction between LEC-owned payphones and independently-owned payphones, and mandated that LECs not discriminate in favor of their own payphone operations. Therefore, a LEC must impute to its payphone operations any charge that it would impose on an independent PSP, including the PICC at the corresponding single line or multiline rate. In addition, consistent with Section 276, there can be no differential in charges imposed by an LEC on its payphones or those of an independent provider. If the Commission concludes that a LEC may not impose a PICC on telephone lines used by the LEC's payphone operations, then the Commission must likewise conclude that the PICC may not be imposed by the LEC on the telephone lines used by independent PSPs. Such equal treatment will maintain the competitive parity that Section 276 mandates.

3. Assuming That Price Cap LECs Are Permitted To Assess PICC Charges On Public Payphone Lines, Should The PICC Be: (a) Charged To The Presubscribed 1+ Carrier; (b) Charged To The Presubscribed 0+ Carrier; (c) Imputed To The LEC's Payphone Unit As An End User; (d) Split Evenly Between The 1+ And 0+ PIC; Or (e) Prorated Among All IXCs That Carry Calls Originating From A Particular Payphone Each Month? Commenters May Also Propose Other Alternatives Methods For Allocating The Public Payphone PICC?

As discussed above in Section II, each LEC payphone is generally presubscribed to two IXCs: one carrier for 0+ calls and one carrier for 1+ calls. For the BOCs, whose payphone operations are often subject to "grandfathered" contracts between the presubscribed 0+ IXC and the location provider, the business decision for the BOC is whether to impose a PICC on the presubscribed 1+ carrier, which is most often AT&T (the only IXC that was capable of receiving such 1+ traffic at the time of divestiture), or on the presubscribed 0+ carrier, which was selected by the premises owner and does not have a contractual relationship with either the BOC or the BOC payphone operations.

Because the letter requests complaining about the PICC prompting this proceeding were filed by parties who are either presubscribed 0+ IXCs or associated with presubscribed 0+ IXCs, it appears that the BOCs have elected to impose the PICC on the presubscribed 0+ carrier, the party that has no ability to "fight back" by passing the charge on to the cost causer, i.e., the subscriber to the line, the BOC payphone operations. If the BOCs were to impose the PICC on the IXC with which the BOC payphone affiliate has a relationship, i.e., the 1+ carrier, that IXC could attempt to recoup the charges from its subscriber, the BOC payphone operation, which would result in less revenue for the BOC payphone operation. By imposing the PICC on the presubscribed 0+ carrier, the BOC maximizes its revenues, as well as those of its payphone operations, because the charge is passed on to the entity that generally will have no choice but to absorb it. This is a clear instance of a BOC impermissibly discriminating in favor of the BOC's payphone operations.

The LECs, including the BOCs, cannot be allowed to apply the PICC to an independent PSP's 1+ carrier, and then simultaneously apply the charge to a LEC PSP's 0+ carrier. Not only is this practice inconsistent, it is clearly discriminatory in a way that benefits the LECs' payphone operations and penalizes the independent PSPs. As a matter of equity, the Commission should, therefore, require all LECs to apply the PICC to the 1+ carrier, particularly since the LECs impose the PICC on the 1+ carrier of the independently-owned payphones.